

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY ALAN EBERLY,

Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF'S  
DEPARTMENT, et al.,

Defendants.

No. 2:25-cv-0736 CKD P

ORDER AND

FININDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On March 17, 2025, plaintiff's complaint was dismissed with leave to amend. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

Plaintiff alleges he was wrongfully convicted of murdering his wife. He seeks release from prison and damages. As plaintiff has already been informed, when a state prisoner challenges the legality of his custody and the relief he seeks is the determination of his entitlement to an earlier or immediate release, his sole federal remedy is a writ of habeas corpus

1 which plaintiff would seek under 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475, 500  
2 (1973). Also, to the extent plaintiff seeks damages, plaintiff cannot proceed on a §1983 claim for  
3 damages if the claim implies the invalidity of his conviction or sentence, Heck v. Humphrey, 512  
4 U.S. 477, 487 (1994), as the claims do in his complaint.

5 For these reasons, plaintiff's amended complaint fails to state a claim upon which relief  
6 can be granted. Because it does not appear plaintiff can, in good faith, state a claim upon which  
7 he can proceed, the court will not grant leave to amend a second time and will recommend that  
8 this action be dismissed.

9 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court  
10 assign a district court judge to this case.

11 IT IS HEREBY RECOMMENDED that:

- 12 1. Plaintiff's amended complaint be dismissed; and
- 13 2. This case be closed.

14 These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, plaintiff may file written objections  
17 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
18 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
19 time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
20 Cir. 1991).

21 Dated: March 31, 2025

22   
23 CAROLYN K. DELANEY  
24 UNITED STATES MAGISTRATE JUDGE